

113TH CONGRESS
1ST SESSION

H. R. 1982

To amend section 1862 of the Social Security Act with respect to the application of Medicare secondary payer rules to workers' compensation settlement agreements and Medicare set-asides under such agreements.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2013

Mr. REICHERT (for himself and Mr. THOMPSON of California) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend section 1862 of the Social Security Act with respect to the application of Medicare secondary payer rules to workers' compensation settlement agreements and Medicare set-asides under such agreements.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare Secondary
5 Payer and Workers’ Compensation Settlement Agree-
6 ments Act of 2013”.

1 **SEC. 2. APPLICATION OF MEDICARE SECONDARY PAYER**
 2 **RULES TO CERTAIN WORKERS' COMPENSA-**
 3 **TION SETTLEMENT AGREEMENTS AND**
 4 **QUALIFIED MEDICARE SET-ASIDE PROVI-**
 5 **SIONS.**

6 (a) THRESHOLD FOR SECONDARY PAYER PROVI-
 7 SIONS FOR CERTAIN WORKERS' COMPENSATION SETTLE-
 8 MENT AGREEMENTS.—Section 1862 of the Social Security
 9 Act (42 U.S.C. 1395y) is amended—

10 (1) in subsection (b)(2)(A)(ii), by inserting
 11 “subject to subsection (p),” after “(ii)”; and

12 (2) by adding at the end the following new sub-
 13 section:

14 “(p) THRESHOLD FOR SECONDARY PAYER PROVI-
 15 SIONS FOR CERTAIN WORKERS' COMPENSATION SETTLE-
 16 MENT AGREEMENTS.—

17 “(1) IN GENERAL.—A workers' compensation
 18 law or plan shall not be treated as a primary plan
 19 for purposes of subsection (b) with respect to a
 20 workers' compensation settlement agreement if the
 21 agreement (or claimant under the agreement) meets
 22 any of the following requirements:

23 “(A) TOTAL SETTLEMENT AMOUNT NOT
 24 EXCEEDING \$25,000.—Such agreement has a
 25 total settlement amount (as determined under
 26 paragraph (2)) that does not exceed \$25,000 or

1 such greater amount as the Secretary may
2 specify in regulations.

3 “(B) LIKELY INELIGIBILITY OF WORKERS’
4 COMPENSATION CLAIMANT FOR MEDICARE BEN-
5 EFITS.—The claimant subject to such agree-
6 ment—

7 “(i) is not eligible for benefits under
8 this title as of the effective date of the
9 agreement; and

10 “(ii) is unlikely to become so eligible,
11 as determined under paragraph (3), within
12 30 months after such effective date.

13 “(C) NO FUTURE WORKERS’ COMPENSA-
14 TION MEDICAL EXPENSES.—The claimant sub-
15 ject to such agreement is not eligible for pay-
16 ment of medical expenses incurred after the ef-
17 fective date of the agreement from the workers’
18 compensation law or plan of the jurisdiction in
19 which such agreement will be effective.

20 “(D) NO LIMITATION ON FUTURE WORK-
21 ERS’ COMPENSATION MEDICAL EXPENSES.—
22 Such agreement does not limit or extinguish the
23 right of the claimant to payment of medical ex-
24 penses incurred after the effective date of such
25 agreement by the workers’ compensation law or

1 plan of the jurisdiction in which the agreement
2 will be effective.

3 “(2) DETERMINATION OF TOTAL SETTLEMENT
4 AMOUNT OF WORKERS’ COMPENSATION SETTLE-
5 MENT AGREEMENT.—For purposes of paragraph
6 (1)(A) and subsection (q) and with respect to a
7 work-related injury or illness that is the subject of
8 a workers’ compensation settlement agreement, the
9 total settlement amount of the agreement is the sum
10 of monetary wage replacement benefits, attorney
11 fees, all future medical expenses, repayment of Medi-
12 care conditional payments, payout totals for annu-
13 ities to fund the expenses listed above, and any pre-
14 viously settled portion of the workers’ compensation
15 claim.

16 “(3) DETERMINATION OF LIKELY INELIGI-
17 BILITY OF CLAIMANT FOR MEDICARE BENEFITS.—
18 For purposes of paragraph (1)(B)(ii), a workers’
19 compensation claimant shall be deemed unlikely to
20 become eligible for benefits under this title within 30
21 months after the effective date of the agreement un-
22 less, as of the effective date of the agreement, such
23 claimant is insured for disability insurance benefits
24 under section 223(c)(1) and is described in any of
25 the following subparagraphs:

1 “(A) AWARDED DISABILITY BENEFITS.—
2 The individual has been awarded such disability
3 insurance benefits.

4 “(B) APPLIED FOR DISABILITY.—The indi-
5 vidual has applied for such disability insurance
6 benefits.

7 “(C) ANTICIPATES APPEAL.—The indi-
8 vidual has been denied such disability insurance
9 benefits but anticipates appealing that decision.

10 “(D) APPEALING OR REFILING.—The indi-
11 vidual is in the process of appealing or refiling
12 for such disability insurance benefits.

13 “(E) MINIMUM AGE.—The individual is at
14 least 62 years and 6 months of age.

15 “(F) END-STAGE RENAL DISEASE.—The
16 individual is medically determined to have end-
17 stage renal disease but does not yet qualify for
18 health benefits under section 226A based on
19 such disease.

20 “(4) DEFINITIONS.—For purposes of this sub-
21 section and subsection (q):

22 “(A) COMPROMISE AGREEMENT.—The
23 term ‘compromise agreement’ means a workers’
24 compensation settlement agreement that—

1 “(i) applies to a workers’ compensa-
2 tion claim that is denied or contested, in
3 whole or in part, by a workers’ compensa-
4 tion payer involved under the workers’
5 compensation law or plan applicable to the
6 jurisdiction in which the agreement has
7 been settled; and

8 “(ii) does not provide for a payment
9 of the full amount of benefits sought or
10 that may be payable under the workers’
11 compensation claim.

12 “(B) COMMUTATION AGREEMENT.—The
13 term ‘commutation agreement’ means a work-
14 ers’ compensation settlement agreement to set-
15 tle all or a portion of a workers’ compensation
16 claim, in which—

17 “(i) liability for past and future bene-
18 fits is not disputed; and

19 “(ii) the parties to the agreement
20 agree to include payment for future work-
21 ers’ compensation benefits payable after
22 the date on which the agreement becomes
23 effective.

1 “(C) WORKERS’ COMPENSATION CLAIM-
2 ANT.—The term ‘workers’ compensation claim-
3 ant’ means a worker who—

4 “(i) is or may be covered under a
5 workers’ compensation law or plan; and

6 “(ii) submits a claim or accepts bene-
7 fits under such law or plan for a work-re-
8 lated injury or illness.

9 “(D) WORKERS’ COMPENSATION LAW OR
10 PLAN.—

11 “(i) IN GENERAL.—The term ‘work-
12 ers’ compensation law or plan’ means a
13 law or program administered by a State or
14 the United States to provide compensation
15 to workers for a work-related injury or ill-
16 ness (or for disability or death caused by
17 such an injury or illness), including the
18 Longshore and Harbor Workers’ Com-
19 pensation Act (33 U.S.C. 901–944, 948–
20 950), chapter 81 of title 5, United States
21 Code (known as the Federal Employees
22 Compensation Act), the Black Lung Bene-
23 fits Act (30 U.S.C. 931 et seq.), and part
24 C of title 4 of the Federal Coal Mine and
25 Safety Act (30 U.S.C. 901 et seq.), but not

1 including the Act of April 22, 1908 (45
2 U.S.C. 51 et seq.) (popularly referred to as
3 the Federal Employer's Liability Act).

4 “(ii) INCLUSION OF SIMILAR COM-
5 PENSATION PLAN.—Such term includes a
6 similar compensation plan established by
7 an employer that is funded by such em-
8 ployer or the insurance carrier of such em-
9 ployer to provide compensation to a worker
10 of such employer for a work-related injury
11 or illness.

12 “(E) WORKERS' COMPENSATION PAYER.—
13 The term ‘workers’ compensation payer’ means,
14 with respect to a workers’ compensation law or
15 plan, a workers’ compensation insurer, self-in-
16 surer, employer, individual, or any other entity
17 that is or may be liable for the payment of ben-
18 efits to a workers’ compensation claimant pur-
19 suant to the workers’ compensation law or plan.

20 “(F) WORKERS' COMPENSATION SETTLE-
21 MENT AGREEMENT.—The term ‘workers’ com-
22 pensation settlement agreement’ means an
23 agreement, which includes a commutation
24 agreement or compromise agreement, or any
25 combination of both, between a claimant and

1 one or more workers' compensation payers
2 which—

3 “(i) forecloses the possibility of future
4 payment of some or all workers' compensa-
5 tion benefits involved; and

6 “(ii)(I) compensates the claimant for
7 a work-related injury or illness as provided
8 for by a workers' compensation law or
9 plan; or

10 “(II) eliminates cause for litigation in-
11 volving issues in dispute between the
12 claimant and payer.”.

13 (b) SATISFACTION OF SECONDARY PAYER REQUIRE-
14 MENTS THROUGH USE OF QUALIFIED MEDICARE SET-
15 ASIDES UNDER WORKERS' COMPENSATION SETTLEMENT
16 AGREEMENTS.—Section 1862 of the Social Security Act
17 (42 U.S.C. 1395y), as amended by subsection (a), is fur-
18 ther amended by adding at the end the following new sub-
19 section:

20 “(q) TREATMENT OF QUALIFIED MEDICARE SET-
21 ASIDES UNDER WORKERS' COMPENSATION SETTLEMENT
22 AGREEMENTS.—

23 “(1) SATISFACTION OF SECONDARY PAYER RE-
24 QUIREMENTS THROUGH USE OF QUALIFIED MEDI-
25 CARE SET-ASIDES.—

1 “(A) FULL SATISFACTION OF CLAIM OBLI-
2 GATIONS.—

3 “(i) IN GENERAL.—If a workers’ com-
4 pensation settlement agreement, related to
5 a claim of a workers’ compensation claim-
6 ant, includes a qualified Medicare set-aside
7 (as defined in paragraph (2)), such set-
8 aside shall satisfy any obligation with re-
9 spect to the present or future payment re-
10 imbursement under subsection (b)(2) with
11 respect to such claim. The Secretary shall
12 have no further recourse, directly or indi-
13 rectly, under this title with respect to such
14 agreement.

15 “(ii) RULE OF CONSTRUCTION.—
16 Nothing in this section shall be construed
17 as requiring the submission of a Medicare
18 set-aside to the Secretary.

19 “(B) MEDICARE SET-ASIDE AND MEDI-
20 CARE SET-ASIDE AMOUNT DEFINED.—For pur-
21 poses of this subsection:

22 “(i) MEDICARE SET-ASIDE.—The
23 term ‘Medicare set-aside’ means, with re-
24 spect to a workers’ compensation settle-
25 ment agreement, a provision in the agree-

1 ment that provides for a payment of a
2 lump sum, annuity, a combination of a
3 lump sum and an annuity, or other
4 amount that is in full satisfaction of the
5 obligation described in subparagraph (A)
6 for items and services that the workers'
7 compensation claimant under the agree-
8 ment received or is likely to receive under
9 the applicable workers' compensation law
10 and for which payment would be made
11 under this title, but for subsection
12 (b)(2)(A).

13 “(ii) MEDICARE SET-ASIDE
14 AMOUNT.—The term ‘Medicare set-aside
15 amount’ means, with respect to a Medicare
16 set-aside, the actual dollar amount pro-
17 vided for in clause (i).

18 “(2) QUALIFIED MEDICARE SET-ASIDE.—

19 “(A) REQUIREMENTS OF QUALIFIED MEDI-
20 CARE SET-ASIDE.—For purposes of this sub-
21 section, the term ‘qualified Medicare set-aside’
22 is a Medicare set-aside in which the Medicare
23 set-aside amount reasonably takes into account
24 the full payment obligation described in para-
25 graph (1)(A), while meeting the requirements of

1 subparagraphs (B) and (C) and giving due con-
2 sideration to the following:

3 “(i) The illness or injury giving rise to
4 the workers’ compensation claim involved.

5 “(ii) The age and life expectancy of
6 the claimant involved.

7 “(iii) The reasonableness of and ne-
8 cessity for future medical expenses for
9 treatment of the illness or injury involved.

10 “(iv) The duration of and limitation
11 on benefits payable under the workers’
12 compensation law or plan involved.

13 “(v) The regulations and case law rel-
14 evant to the State workers’ compensation
15 law or plan involved.

16 “(B) ITEMS AND SERVICES INCLUDED.—A
17 qualified Medicare set-aside—

18 “(i) shall include payment for items
19 and services that are covered and otherwise
20 payable under this title as of the effective
21 date of the workers’ compensation settle-
22 ment agreement and that are covered by
23 the workers’ compensation law or plan;
24 and

1 “(ii) is not required to provide for
2 payment for items and services that are
3 not described in clause (i).

4 “(C) PAYMENT REQUIREMENTS.—

5 “(i) REQUIRED USE OF WORKERS’
6 COMPENSATION FEE SCHEDULE.—

7 “(I) IN GENERAL.—Except in the
8 case of an optional direct payment of
9 a Medicare set-aside made under
10 paragraph (5)(A), the set-aside
11 amount shall be based upon the pay-
12 ment amount for items and services
13 under the workers’ compensation fee
14 schedule (effective as of the date of
15 the agreement) applicable to the work-
16 ers’ compensation law or plan in-
17 volved.

18 “(II) WORKERS’ COMPENSATION
19 FEE SCHEDULE DEFINED.—For pur-
20 poses of this subsection, the term
21 ‘workers’ compensation fee schedule’
22 means, with respect to a workers’
23 compensation law or plan of a State
24 or a similar plan applicable in a State,
25 the schedule of payment amounts the

1 State has established to pay providers
2 for items and services furnished to
3 workers who incur a work-related in-
4 jury or illness as defined under such
5 law or plan (or in the absence of such
6 a schedule, the applicable medical re-
7 imbursement rate under such law or
8 plan).

9 “(ii) OPTIONAL PROPORTIONAL AD-
10 JUSTMENT FOR COMPROMISE SETTLEMENT
11 AGREEMENTS.—

12 “(I) IN GENERAL.—In the case
13 of a compromise settlement agree-
14 ment, a claimant or workers’ com-
15 pensation payer who is party to the
16 agreement may elect to calculate the
17 Medicare set-aside amount of the
18 agreement by applying a percentage
19 reduction to the Medicare set-aside
20 amount for the total settlement
21 amount that could have been payable
22 under the applicable workers’ com-
23 pensation law or similar plan involved
24 had the denied or contested portion of
25 the claim not been subject to a com-

1 promise agreement. The percentage
2 reduction shall be equal to the denied
3 or contested percentage of such total
4 settlement. Such election may be
5 made by a party to the agreement
6 only with the written consent of the
7 other party to the agreement.

8 “(II) APPLICATION.—If the
9 claimant or workers’ compensation
10 payer elects to calculate the Medicare
11 set-aside amount under this clause,
12 the Medicare set-aside shall be
13 deemed a qualified Medicare set-aside.

14 “(D) CERTAIN MEDICARE SET-ASIDES
15 WITH SAFE HARBOR AMOUNT DEEMED QUALI-
16 FIED MEDICARE SET-ASIDES.—

17 “(i) IN GENERAL.—For purposes of
18 this section and subject to clause (iv), a
19 Medicare set-aside of a workers’ compensa-
20 tion settlement agreement shall be deemed
21 a qualified Medicare set-aside if the Medi-
22 care set-aside amount involved is the safe
23 harbor amount for the agreement and the
24 agreement does not exceed \$250,000.

1 “(ii) WRITTEN CONSENT.—A safe
2 harbor amount, with respect to a workers’
3 compensation agreement, shall be treated
4 as the Medicare set-aside amount for such
5 agreement for purposes of clause (i) only
6 upon written consent of all parties to the
7 agreement.

8 “(iii) SAFE HARBOR AMOUNT DE-
9 FINED.—For purposes of this subsection,
10 the term ‘safe harbor amount’ means, with
11 respect to a workers’ compensation settle-
12 ment agreement, 15 percent of the total
13 settlement amount of the agreement (as
14 determined under subsection (p)(2)), ex-
15 cluding repayment of conditional payments
16 and previously settled portions of the claim
17 involved. In applying the previous sentence
18 for purposes of determining the safe har-
19 bor amount, with respect to a workers’
20 compensation agreement, if the agreement
21 includes an annuity, the cost (but not the
22 payout of the annuity) shall be included in
23 determining the total settlement amount of
24 the agreement.

1 “(iv) MANDATORY DIRECT PAYMENT
2 OF SAFE HARBOR AMOUNT.—A Medicare
3 set-aside of a worker’s compensation settle-
4 ment agreement described in this para-
5 graph may not be treated as a qualified
6 set-aside under clause (i) unless an election
7 is made under paragraph (5)(A) to trans-
8 fer to the Secretary a direct payment of
9 such set-aside.

10 “(E) SECRETARIAL AUTHORITY WITH RE-
11 SPECT TO DEEMED QUALIFIED MEDICARE SET-
12 ASIDES WITH SAFE HARBOR AMOUNT.—

13 “(i) DETERMINATION.—If the Sec-
14 retary determines, based on the data de-
15 scribed in clause (ii), that the provisions of
16 subparagraph (D) have caused a signifi-
17 cant negative financial impact (as specified
18 by the Chief Actuary of the Centers for
19 Medicare & Medicaid Services) on the Fed-
20 eral Hospital Insurance Trust Fund under
21 section 1817 or the Federal Supplementary
22 Medical Insurance Trust Fund under sec-
23 tion 1841, then the Secretary shall adopt
24 rules to reduce such impact by modifying

1 the amount of the percent described in
 2 subparagraph (D)(iii).

3 “(ii) REQUIRED DATA.—The deter-
 4 mination under clause (i) shall be based on
 5 data on—

6 “(I) the projected effect of the
 7 provisions described in such para-
 8 graph on the Federal Hospital Insur-
 9 ance Trust Fund under section 1817
 10 or the Federal Supplementary Medical
 11 Insurance Trust Fund under section
 12 1841 during the three-year period be-
 13 ginning on the date of the enactment
 14 of this subsection; as compared to

15 “(II) data on the effect on such
 16 trust funds of the provisions of sub-
 17 section (b), as in effect during the
 18 three-year period prior to such date of
 19 enactment.

20 “(3) PROCESS FOR APPROVAL OF QUALIFIED
 21 MEDICARE SET-ASIDES.—

22 “(A) OPTIONAL PRIOR APPROVAL BY SEC-
 23 RETARY.—A party to a workers’ compensation
 24 settlement agreement that includes a Medicare
 25 set-aside may submit to the Secretary the Medi-

1 care set-aside amount for approval of the set-
2 aside as a qualified Medicare set-aside. The set-
3 aside shall be submitted in accordance with a
4 procedure specified by the Secretary.

5 “(B) NOTICE OF DETERMINATION OF AP-
6 PROVAL OR DISAPPROVAL.—Not later than 60
7 days after the date on which the Secretary re-
8 ceives a submission under subparagraph (A),
9 the Secretary shall notify in writing the parties
10 to the workers’ compensation settlement agree-
11 ment of the determination of approval or dis-
12 approval. If the determination disapproves such
13 submission the Secretary shall include with
14 such notification the specific reasons for the
15 disapproval. A determination that disapproves a
16 submission is not valid if the determination
17 does not include a specific explanation of each
18 deficiency of the submission.

19 “(4) APPEALS.—

20 “(A) IN GENERAL.—A party to a workers’
21 compensation settlement agreement that is dis-
22 satisfied with a determination under paragraph
23 (3)(B), upon filing a request for reconsideration
24 with the Secretary not later than 60 days after

1 the date of notice of such determination, shall
2 be entitled to—

3 “(i) reconsideration of the determina-
4 tion by the Secretary (with respect to such
5 determination);

6 “(ii) a hearing before an administra-
7 tive judge thereon after such reconsider-
8 ation; and

9 “(iii) judicial review of the Secretary’s
10 final determination after such hearing.

11 “(B) DEADLINES FOR DECISIONS.—

12 “(i) RECONSIDERATIONS.—

13 “(I) IN GENERAL.—The Sec-
14 retary shall conduct and conclude a
15 reconsideration of a determination
16 under subparagraph (A)(i) and mail
17 the notice of the decision of such re-
18 consideration to the party involved by
19 not later than the last day of the 30-
20 day period beginning on the date that
21 a request for such reconsideration has
22 been timely filed.

23 “(II) APPEALS OF RECONSIDER-
24 ATIONS.—If a party to the workers’
25 compensation settlement involved is

1 dissatisfied with the Secretary's deci-
2 sion under subclause (I) that party
3 may file an appeal within the 30-day
4 period after the date of receipt of the
5 notice of the decision under such sub-
6 clause and request a hearing before
7 an administrative law judge.

8 “(III) FAILURE BY SECRETARY
9 TO PROVIDE NOTICE.—In the case of
10 a failure by the Secretary to mail the
11 notice of the decision under subclause
12 (I) by the last day of the period de-
13 scribed in such subclause, the Sec-
14 retary shall be deemed to have ap-
15 proved the submission as submitted
16 under paragraph (3)(A).

17 “(ii) HEARINGS.—

18 “(I) IN GENERAL.—An adminis-
19 trative law judge shall conduct and
20 conclude a hearing on a decision of
21 the Secretary under clause (i) and
22 render a decision on such hearing by
23 not later than the last day of the 90-
24 day period beginning on the date that

1 a request for such hearing has been
2 timely filed.

3 “(II) JUDICIAL REVIEW.—A deci-
4 sion under subclause (I) by an admin-
5 istrative law judge constitutes a final
6 agency action and is subject to judi-
7 cial review.

8 “(III) FAILURE BY ADMINISTRA-
9 TIVE LAW JUDGE TO RENDER TIMELY
10 DECISION.—In the case of a failure by
11 an administrative law judge to render
12 a decision under subclause (I) by the
13 last day of the period described in
14 such subclause, the party requesting
15 the hearing may seek judicial review
16 of the decision under clause (i), not-
17 withstanding any requirements for a
18 hearing for purposes of the party’s
19 right to such judicial review.

20 “(5) ADMINISTRATION OF MEDICARE SET-ASIDE
21 PROVISIONS; PROTECTION FROM CERTAIN LIABIL-
22 ITY.—

23 “(A) OPTIONAL DIRECT PAYMENT OF
24 MEDICARE SET-ASIDE AMOUNT.—

1 “(i) ELECTION FOR DIRECT PAYMENT
2 OF MEDICARE SET-ASIDE.—With respect to
3 a claim for which a workers’ compensation
4 settlement agreement is established, a
5 claimant or workers’ compensation payer
6 who is party to the agreement may elect,
7 but is not required, to transfer to the Sec-
8 retary a direct payment of the qualified
9 Medicare set-aside. With respect to a quali-
10 fied Medicare set-aside paid directly to the
11 Secretary, the parties involved may cal-
12 culate the Medicare set-aside amount of
13 such set-aside using any of the following
14 methods:

15 “(I) In the case of any Medicare
16 set-aside of a compromise settlement
17 agreement under paragraph (2)(C)(ii),
18 the amount calculated in accordance
19 with such paragraph.

20 “(II) In the case of any Medicare
21 set-aside, the amount based upon the
22 payment amount for items and serv-
23 ices under the workers’ compensation
24 fee schedule (effective as of the date
25 of the agreement) applicable to the

workers' compensation law or plan involved, in accordance with paragraph (2)(C)(i)(I).

“(III) In the case of any Medicare set-aside, the payment amount applicable to the items and services under this title as in effect on the effective date of the agreement.

Such transfer shall be in accordance with a procedure established by the Secretary and shall be made only upon written consent of the other party to the agreement.

“(ii) ELECTION SATISFYING LIABILITY.—An election made under clause (i), with respect to a qualified Medicare set-aside shall satisfy any payment, in relation to the underlying claim of the related workers' compensation settlement agreement, required under subsection (b)(2) to be made by the claimant or payer to the Secretary. The Secretary shall have no further recourse, directly or indirectly, under this title with respect to such agreement.

“(B) PROTECTION FROM CERTAIN LIABILITY.—

1 “(i) LIABILITY FOR MEDICARE SET-
2 ASIDE PAYMENT GREATER THAN PAYMENT
3 UNDER WORKERS’ COMPENSATION LAW.—
4 No workers’ compensation claimant, work-
5 ers’ compensation payer, employer, admin-
6 istrator of the Medicare set-aside, legal
7 representative of the claimant, payer, em-
8 ployer, or administrator, or any other
9 party related to the claimant, payer, em-
10 ployer, or administrator shall be liable for
11 any payment amount established under a
12 Medicare set-aside for an item or service
13 provided to the claimant that is greater
14 than the payment amount for the item or
15 service established under the workers’ com-
16 pensation fee schedule (or in the absence
17 of such schedule, the medical reimburse-
18 ment rate) under the compensation law or
19 plan of the jurisdiction where the agree-
20 ment will be effective.

21 “(ii) LIABILITY FOR PROVIDER
22 CHARGES GREATER THAN PAYMENT
23 UNDER WORKERS’ COMPENSATION AGREE-
24 MENT.—With respect to a workers’ com-
25 pensation settlement agreement, a provider

1 may not bill (or collect any amount from)
2 the workers' compensation claimant, work-
3 ers' compensation payer, employer, admin-
4 istrator of the Medicare set-aside, legal
5 representative of the claimant, payer, em-
6 ployer, or administrator, or any other
7 party related to the claimant, payer, em-
8 ployer, or administrator an amount for
9 items and services provided to the claimant
10 that is greater than the payment rate for
11 such items and services established under
12 the Medicare set-aside of the agreement.
13 No person is liable for payment of any
14 amounts billed for an item or service in
15 violation of the previous sentence. If a pro-
16 vider willfully bills (or collects an amount)
17 for such an item or service in violation of
18 such sentence, the Secretary may apply
19 sanctions against the provider in accord-
20 ance with section 1842(j)(2) in the same
21 manner as such section applies with re-
22 spect to a physician. Paragraph (4) of sec-
23 tion 1842(j) shall apply under this clause
24 in the same manner as such paragraph ap-
25 plies under such section.

1 “(6) TREATMENT OF STATE WORKERS’ COM-
2 PENSATION LAW.—For purposes of this subsection
3 and subsection (p), if a workers’ compensation set-
4 tlement agreement is accepted, reviewed, approved,
5 or otherwise finalized in accordance with the work-
6 ers’ compensation law of the jurisdiction in which
7 such agreement will be effective, such acceptance, re-
8 view, approval, or other finalization shall be deemed
9 conclusive as to any and all matters within the juris-
10 diction of the workers’ compensation law, including
11 the determination of reasonableness of the settle-
12 ment value; any allocations of settlement funds; the
13 projection of future indemnity or medical benefits
14 that may be payable under the State workers’ com-
15 pensation law; and, in the case of a compromise
16 agreement, the total amount that could have been
17 payable for a claim which is the subject of such
18 agreement in accordance with paragraph (2)(C)(ii).
19 A determination made by applicable authority for a
20 jurisdiction that a workers’ compensation settlement
21 agreement is in accordance with the workers’ com-
22 pensation law of the jurisdiction shall not be subject
23 to review by the Secretary.”.

24 (c) CONFORMING AMENDMENTS.—Subsection (b) of
25 such section is further amended—

1 (1) in paragraph (2)(B)(ii), by striking “A pri-
 2 mary plan” and inserting “Subject to subsections
 3 (p) and (q), a primary plan”;

4 (2) in paragraph (2)(B)(iii)—

5 (A) in the first sentence, by striking “In
 6 order to recover payment” and inserting “Sub-
 7 ject to subsection (q), in order to recover pay-
 8 ment”; and

9 (B) in the third sentence, by striking “In
 10 addition” and inserting “Subject to subsection
 11 (q), in addition”; and

12 (3) in paragraph (3)(A), by striking “There is
 13 established a private cause of action” and inserting
 14 “Subject to subsection (q), there is established a pri-
 15 vate cause of action”.

16 (d) MODERNIZING TERMINOLOGY FOR PURPOSES OF
 17 MEDICARE SECONDARY PAYER PROVISIONS.—Subsection
 18 (b)(2)(A) of such section is amended by striking “work-
 19 men’s compensation law or plan” and inserting “workers’
 20 compensation law or plan” each place it appears.

21 **SEC. 3. LIMITATION ON LIABILITY.**

22 The parties to a workers’ compensation settlement
 23 agreement which met the provisions of section 1862(b) of
 24 the Social Security Act (42 U.S.C. 1395y(b)) on the effec-
 25 tive date of settlement shall be accepted as meeting the

1 requirements of such section notwithstanding changes in
2 law, regulations, or administrative interpretation of such
3 provisions after the effective date of such settlement.
4 Nothing in section 1862(b) of the Social Security Act (42
5 U.S.C. 1395y(b)) shall authorize the Secretary of Health
6 and Human Services to impose liability that is additional
7 to the liability in effect on the date of the enactment of
8 this Act with respect to a workers' compensation settle-
9 ment agreement the effective date of which is before such
10 date of enactment, except in the case of fraud.

11 **SEC. 4. EFFECTIVE DATE.**

12 The amendments made by this Act shall apply to a
13 workers' compensation settlement agreement with an ef-
14 fective date on or after the date of the enactment of this
15 Act.

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